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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/810,940	03/26/2004	Alisa Ann Ivory	9191ML	1918

27752 7590 09/14/2010  
THE PROCTER & GAMBLE COMPANY  
Global Legal Department - IP  
Sycamore Building - 4th Floor  
299 East Sixth Street  
CINCINNATI, OH 45202

EXAMINER
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DAVIS, RUTH A

ART UNIT	PAPER NUMBER
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1651

MAIL DATE	DELIVERY MODE
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09/14/2010

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/810,940	<b>Applicant(s)</b> IVORY ET AL.	
	<b>Examiner</b> Ruth A. Davis	<b>Art Unit</b> 1651	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 31 March 2010.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1,2 and 20-37 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-2,20-37 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)         | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)         | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                          |

### **DETAILED ACTION**

Applicant's Request for Continued Examination and response filed on March 31, 2010 have been entered into the case. Claims 1 – 2 and 20 – 37 are pending and have been considered on the merits. All arguments have been fully considered.

#### ***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

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3. Claims 1 – 7 and 9 – 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Barkalow in view of Yatka et al. (US 5458892 A), Leung et al. (US 6596298) and Barkalow et al. (US 2004/0096569)

Barkalow teaches an edible film composition comprising bulk filler agents, film forming agents, plasticizing agents, flavoring agents and surfactants (0006,0018) wherein the bulk fillers may be wood cellulose (0048), the film forming agents are hydroxypropyl methyl cellulose (0043). The composition may additionally contain vegetable oils (0065). The bulking agent and film forming agents are present at 10 – 90% (0007,0009), the film forming agents are present at 10 – 90% (0047), the plasticizing agents are present at 0 – 20% (0049), the flavoring is present at .1 – 20% (0062), a surfactant may be present (0018,0060,claim 13), and the composition rapidly dissolves (0032).

Barkalow does not teach the composition wherein the bulk filler agent is indigestible dextrin, purified wood cellulose or psyllium with the claimed length. However, at the time of the claimed invention, indigestible dextrin was a known and used bulk filler agent in the art. In support, Yatka teaches a bulking agent that is indigestible dextrin with the claimed length (col.1 line 44-57, col.3). In addition, Yatka teaches that the indigestible dextrin can be dried with flavors to encapsulate the flavor (col.2 line 25-36, col.6 line 13-23). At the time of the claimed invention, it would have been obvious to one of ordinary in the art to use the indigestible dextrin of Yatka as the bulk filling agent of Barkalow, since it was a recognized bulk filler in the art. Moreover, at the time of the claimed invention, one of ordinary skill in the art would have been motivated by Yatka to substitute indigestible dextrin as the bulk filler in the composition with a reasonable expectation for successfully obtaining the functional edible film of Barkalow.

Barkalow does not teach the film forming agent is polyvinyl pyrrolidone, wherein a tooth whitening agent is included. However, at the time of the claimed invention, polyvinyl pyrrolidone was a known and used film forming agent in the art. In support, Leung teaches film forming agents for edible films to include polyvinyl pyrrolidone (col4 line 64-67), xanthan gum, starches, dextrin, flavoring agents, surfactants (col.5). Barkalow (abstract) and Leung (col.12) additionally teaches pharmaceutically active ingredients may be included in the films. At the time of the claimed invention, it would have been obvious to one of ordinary skill in the art to include a tooth whitening agent as they were known pharmaceutical agents used in the art in edible films. In support, Barkalow ('569) teaches films wherein medicaments such as whitening agents are included in the film (0027). Moreover, at the time of the claimed invention, one of ordinary skill in the art would have been motivated by the cited references to combine the instant ingredients together with a reasonable expectation for successfully obtaining the functional edible film of Barkalow.

The references do not teach the composition wherein the exact amounts of each component are present. However as evidenced by the ranges and specific teachings (0068) of Barkalow, it would have been well within the purview of one of ordinary skill in the art to optimize the exact amount of each component as a matter of routine experimentation. Moreover, one of ordinary skill in the art would have been motivated to optimize the various amounts of each component with a reasonable expectation for successfully obtaining the effective edible film of Barkalow.

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4. Claims 1 – 2 and 20 – 37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Barkalow et al (US 2004/0096569).

Barkalow teaches edible, dissolvable films comprising 1 – 30% fibers such as wood, cellulose (0088) dextrin, starches (0024), polyvinyl pyrrolidone (0024) at 5 – 60% (0087), 0 – 20% plasticizing agents (0089) such as glycerin (0026), a tooth whitening agent (0027), xanthan gum (0024), flavoring agents at 0.1 – 20% (0094), vegetable oil (0026), no ionic emulsifiers, or surfactants (0028-0029), water (0045, 0062).

Barkalow does not teach the film with the amounts of each component, the claimed film thickness, or the claimed fiber length. However, each of the claimed components are disclosed as effective components to the film and are each indicated to be easily optimized by one of ordinary skill in the art. In addition, Barkalow specifically teaches the film is dissolvable and that the thickness can be varied (0066). At the time of the claimed invention, one of ordinary skill in the art would have been motivated by Barkalow to combine and optimize the amounts of the instant ingredients with a reasonable expectation for successfully obtaining an effective edible film.

### ***Response to Arguments***

Applicant argues that the references do not teach each a whitening agent or that they were known and used pharmaceuticals at the time of the claimed invention. However in light of the new rejection, the argument is not persuasive.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ruth A. Davis whose telephone number is 571-272-0915. The examiner can normally be reached on M-F 7:00 -3:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Wityshyn can be reached on 571-272-0926. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Ruth A. Davis/  
Primary Examiner, Art Unit 1651

September 11, 2010